

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5492 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SAIDAMIYA BABBASIYA SAIYAD

Versus

COLLECTOR

Appearance:

MR ARUN H MEHTA for Petitioner
MS MANISHA LAVKUMAR AGP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/2000

C A V JUDGEMENT

#. The challenge has been made by the petitioner to the show cause notice at Annexure-C dated 12.7.1989 of the Collector, Ahmedabad to the petitioner for the recovery of certain amount from him for the alleged illegality

committed by him during the period he was member of Nagarpalika and Chairman of the Executive Committee thereof.

#. The petitioner was member of Dhandhuka Nagar Panchayat for the period from 1.1.81 to 23.1.85. From 14.4.85 to 15.7.87 the Nagar Panchayat was superseded and the administrator was appointed. The petitioner has not been elected as a Member of Nagar Palika when the supersession came to an end on July, 1987. The petitioner acted as Chairman in meeting of the Executive Committee held on 22.2.1985. The notice has been given to him in his capacity as Member and Chairman of the Executive Committee.

#. Ms. Manisha Lavkumar, learned AGP raised preliminary objection that this petition is not maintainable as only show cause notice has been given to the petitioner. In her submission the petitioner instead of filing reply to the show cause notice has straightaway come up before this court and challenged the show cause notice. Whatever objections which the petitioner is raising in this Special Civil Application regarding the validity of the show cause notice are open to him to take in the reply to the show cause notice. Lastly contended that it is not the case where it can be said that the collector, Ahmedabad has no jurisdiction to issue this show cause notice.

#. Shri Mehta, learned counsel for the petitioner contended that this show cause notice is wholly without jurisdiction and this petition is not maintainable. In his submission Section 317 of Gujarat Panchayat Act, 1961 is very clear and thereunder a notice cannot be issued against a person at the point of time when he is neither a member of the Panchayat or member of any of the executive committees. It has further been contended that the irregularities alleged to be committed by the petitioner are subject matters of challenge in two Special Civil Applications and both are pending.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. I am satisfied that in the facts of this case, it is not a case where this show cause notice can be said to be wholly without jurisdiction. The learned counsel for the petitioner has not cited any authority of this court or the Hon'ble Supreme Court or any other High Court wherein it is held that a show cause notice under Section 317 of the Gujarat Panchayat Act cannot be given to a person who

has neither holding the office of the member of the Panchayat or member of any of the executive committees. Shri Mehta contended that during the currency of the period of office of the member the notice can be given. But it is difficult to accept. More over these are the points which can be raised by the petitioner in the reply to the show cause notice. This tendency of the litigants to directly challenge the show cause notice by filing Special Civil Application deserves to be deprecated. The learned counsel for the petitioner on being asked by the court failed to show what ultimately decided in the Special Civil Application No.235 of 1985 and Special Civil Application No.2375 of 1985. This matter is squarely covered by the decision of the apex court in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and Ors. 1996(1) SCC 327.

In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any granted, stands vacated. The petitioner is directed to pay Rs.500/= as costs of this petition to the respondent-State.

(S.K.Keshote, J.)

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